

COMPETITIVE SEALED PROPOSALS (REQUEST FOR PROPOSALS)

Unlike Competitive Sealed Bids, the Competitive Sealed Proposals method does not itemize the services to be performed in such detail that the only determinant factor is price. Rather, this method lists the contract deliverables in general terms and overall goals and requires each respondent to offer a detailed strategy for the delivery of the requested services. These strategies, and the cost to implement them, are offered in documents called Technical and Financial Proposals. These proposals must be evaluated, and ranked. Based on the ranking, the evaluators judge one of the offerors (or several in the case of multiple awards) to be the “most advantageous offer to the State.” In this type of procurement, technical ability may outweigh price when ranking responses.

Procurement by competitive sealed proposals is the preferred method for the procurement of human, social, cultural or educational services, and real property leases. Except for the procurement of these services or leases, before a procurement by competitive sealed proposals may be conducted, the procurement officer, with the written approval of the agency head or designee, shall make a determination in accordance with COMAR 21.05.01.02¹ that competitive sealed bidding cannot be used because:

- a. Specifications cannot be prepared that would permit an award based solely on price;
or
- b. Competitive sealed bidding is not practicable or is not advantageous to the State; and
- c. There is compelling reason to use the source selection methodology set forth in COMAR 21.05.03.

As required by COMAR 21.05.03.02, a Request for Proposals (RFP) will include:

- a. Information concerning proposal submission requirements including date, time, and place for receipt of proposals. The evaluation factors and an indication of the relative value of each factor including price. A work statement or scope of services statement, performance schedule, and any specific instructions or requirements;
- b. A statement regarding discussions;

¹ Code of Maryland regulations are always cited by Title, Subtitle, Chapter, Sub-chapter, and Paragraph. Thus, Title 21 (State Procurement Regulations), Subtitle 05 Procurement Methods, Chapter 01 (General Provisions), Paragraph 02 (Preference for Competitive Sealed Bidding) is cited COMAR 21.05.01.02. To view the full text of this or any regulation, go to the Division of State Documents Website and click on COMAR On-line at: <http://dsd.state.md.us>.

- c. Instructions regarding how and where price proposals should be submitted. A statement stipulating the length of time that price proposals are irrevocable;
- d. A statement allowing or denying the acceptance of multiple or alternate proposals;
- e. The mandatory solicitation requirements set forth in COMAR 21.05.08;
- f. All required contract terms and conditions; and
- g. A requirement that receipt of any amendments to the RFP is acknowledged by offerors.

Public Notice

Notice is given to prospective vendors that an administration, facility, or unit needs to have a certain type of service performed. Prospective vendors/bidders are invited to submit proposals for the services outlined in the specifications. The appropriate public notice practices required under COMAR 21.05.02.04, i.e. publication of the solicitation in the *Maryland Contract Weekly Online* for a minimum of 21 days, direct solicitation of known providers of the service² (especially MBE vendors), and posting of the solicitation on the Department's web site and in *e-Maryland Marketplace*.³

Pre-Proposal Conference

A pre-proposal conference is routinely held with prospective offerors at least two weeks prior to the proposal due date to review the RFP and to provide them an opportunity to ask questions or possibly suggest changes in the RFP. Attendance is encouraged but is never mandatory. A written record will be prepared and distributed to everyone known to receive the RFP when the resulting contract is expected to exceed \$100,000.

Evaluation

Proposals are not opened publicly, but rather in the presence of at least two (2) State employees. At that time, a register of proposals shall be created listing the offerors by name, city and state. After the register of proposals is created, the technical proposals will be distributed to

² Vendors' known to provide the needed services should be directly solicited. The RFP, or a Notice of Availability of the RFP (see COMAR 21.05.02.04), is to be sent to a sufficient number of vendors to guarantee a robust competition.

³ eMaryland Marketplace is an on-line, web based procurement portal, which allows Maryland Governments (State, county and local) and vendors to interact in a paperless environment. The portal supports both interactive bidding and catalogue purchasing on the web at: <http://www.emarylandmarketplace.com/emm/index.cfm?page=home>.

an evaluation team, whose identity will not be disclosed. Technical proposals are then evaluated according to the evaluation criteria set forth within the RFP. Offerors' whose proposals are determined to be not reasonably susceptible for award shall be so notified by registered mail "return receipt requested" upon such determination.

Discussions

Discussions are held with all "qualified offerors" to:

- a. Assure that offerors fully understand the requirements of the RFP and the evaluation team fully understands each qualified offerors' technical proposal and their ability to perform as needed.
- b. Give each offeror an opportunity to remedy deficiencies in their proposal or to strengthen a proposal that is already adequate but could be made better.
- c. Obtain the greatest degree of service for the State or otherwise arrive at a contract that is most advantageous to the State.

Best and Final Offers

When deemed appropriate by the evaluation team, qualified offerors may then be permitted to revise their initial proposals, either technical or financial, or both and submit what is called a Best and Final Offer (BAFO). Invitations or requests for Best and Final Offers are sent under the signature of the procurement officer and contain instructions regarding the type of proposal (Technical and/or Financial) that may be amended, the due date and time, where and how to respond, and the fact that offerors may elect not to amend their original proposal. Offerors who respond to the BAFO are then re-evaluated and re-ranked using the new proposal.

Under extraordinary conditions and with the written approval from the Secretary of DHMH or designee, more than one BAFO can be requested. Offerors are then re-evaluated and re-ranked using the latest BAFO.

Offerors are reminded that BAFO's may not be requested and therefore their first submission should always be given their best effort.

Debriefings

Whenever the competitive sealed proposals method is used, unsuccessful offerors may request that they be debriefed. Debriefings will be conducted in accordance with COMAR 21.05.03.06. A request for debriefing must be made in writing to the procurement officer within a reasonable period of time after notification of non-recommendation for award. Although COMAR 21 leaves the determination of a "reasonable period of time" to the judgment of the procurement officer, in practice, any lapse beyond 30 days after notification of non-recommendation for award is usually considered unreasonable barring any special circumstances.

Award

The Team makes a recommendation for award to the agency head or designee based on an aggregate of the technical and financial ranking of all “qualified offerors” taking into account the weight given each in the RFP. All offerors are notified of the evaluation’s outcome by registered mail “return receipt requested”.

The Department of Budget and Management (DBM) must approve contracts that exceed \$25,000; and the Board of Public Works (BPW), comprised of the Governor, Treasurer, and Comptroller, must approve contracts that exceed \$200,000. If only one offeror responds to a RFP contract over \$50,000 it must be approved by the BPW. Prior to sending a contract to DBM, or the BPW, the contractor’s signature on the contract pages will be obtained and legal sufficiency sign-off by the Office of the Attorney General (OAG). The contractor’s signature binds the contractor to the terms of the contract.

These signatures demonstrate to DBM and the BPW that the contractor has agreed to all terms and conditions within the contract and that the contract meets legal sufficiency standards. After obtaining all required approvals, the contract may be awarded.